IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 12503 of 2004(L)

AGAINST THE ORDER DATED IN EP.1137/2000 IN OS.1375/1998 of PRL.M.C.,IRINJALAKUDA

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PETITIONER:

THOMAS, S/O.VARGHESE, MEECHERRY HOUSE,
MELOOR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M

RESPONDENTS:

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1. JOHNSON, S/O.DEVASSY, CHATHELI HOUSE,
THIRUMUDIKKUNNU DESOM, KIZHAKKUMMURI VILLAGE,
MUKUNDAPURAM TALUK.

2. THE STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR
R2 BY GOVT.PLEADER SRI.SHYSON P.MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.12503/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF COMPROMISE DECREE DT.6.1.99 IN O.S.1375/98 OF PRL. MUNSIFF'S COURT, IRINJALAKUDA.

EXT.P2 – TRUE COPY OF MEMO GIVEN BY COUNSEL FOR R1 ADMITTING RECEIPT OF RS.2000/-.

EXT.P3 – TRUE COPY OF AUCTION CERTIFICATE ISSUED BY THE MUNSIFF IN FAVOUR OF R1.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.12503 OF 2004

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

In execution of a money decree, the property belonging to the petitioner was sold in auction and purchased by the decree-holder, the 1st respondent himself. When delivery was attempted to be taken on the basis of Ext.P3 sale certificate, the petitioner filed this Writ Petition under Article 227 of the Constitution.

2. On 25.10.2004, when the case came up for consideration, it was submitted by the petitioner that there is a chance for settlement. But the above submission was disputed by the learned counsel for the 1st respondent. This Court, noticing the conflicting positions taken by the counsel, became inclined to grant interim order only on condition that 50% of the entire decree debt is deposited within three weeks. It is conceded by the learned counsel for the petitioner that the above condition was not complied with.

3. I do not think that this Court will be justified in exercising the discretionary jurisdiction in favour of a person who does not comply with the conditions imposed by this Court. Even otherwise, I do not find any reason for upholding the grounds of challenge. The Writ Petition will stand dismissed. However, in order to enable the

petitioner to sort out the issue with the 1st respondent, further proceedings before the court below will be kept in abeyance till 16.8.2007. It is open to the petitioner to have a settlement with the 1st respondent in the meanwhile.

(PIUS C.KURIAKOSE, JUDGE)

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